

## COMPLIANCE BOARD OPINION 93-4

February 24, 1993

*The Honorable Sherrill T. Murray*

The Open Meetings Compliance Board has considered your complaint dated November 12, 1992, concerning a closed meeting of the Ethics Commission of the City of College Park held on September 2, 1992. In a follow-up letter dated November 16, 1992, you broadened your complaint to refer to alleged violations of the Open Meetings Act in the general meeting practices of the Ethic Commission.<sup>1</sup> The Board will address both your specific complaint and your more general concerns.

### I

#### **September 2 Meeting**

Your complaint alleges that the Ethics Commission violated the Open Meetings Act by failing to give proper notice of the meeting and by holding a closed meeting without a vote of the members of the Commission. The meeting dealt with a complaint that three individuals had violated the Ethics Ordinance of the City of College Park.

With certain exceptions not pertinent here, the Open Meetings Act "does not apply to ... a public body when it is carrying out ... an executive function." §10-503(a)(1)(i) of the State Government Article, Maryland Code. The term "executive function" is defined as follows in §10-502(d)(1):

"Executive function" means the administration of:

- (i) a law of the State;
- (ii) a law of a political subdivision of the State; or
- (iii) a rule, regulation, or bylaw of a public body.

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<sup>1</sup> Your November 16 letter also refers to alleged violations of the College Park Code. The Open Meetings Compliance Board is not authorized to offer opinions about compliance with local law.

When the Ethics Commission of College Park sits to hear a complaint, it is administering "a law of a political subdivision of the State" – namely, the city's own ethics law. Therefore, the Commission would be carrying out an "executive function" as defined in the Open Meetings Act.<sup>2</sup>

Because the Act as a whole is inapplicable, the provisions of the Act governing notice to the public and voting prior to the conduct of a closed session themselves do not apply. For these reason, the Compliance Board finds that the Ethics Commission of College Park did not violate the Open Meetings Act in connection with its closed session on September 2, 1992.

## **II**

### **Meeting Practices Generally**

The Ethics Commission of College Park is a "public body" within the meaning of §10-502(h)(1) of the Open Meetings Act. When it holds a meeting on a matter encompassed by the Act, all of the Act's procedural and substantive requirements apply.

The nature of the Commission's duties, however, suggest that the Act will often simply be inapplicable. Under §38-2 of the College Park Code, the Ethics Commission has the following responsibilities:

- (1) To devise, receive and maintain all forms generated by this Article.
- (2) To provide written, recorded advisory opinions to person subject to this Article as to the applicability of the provisions of this Article to it.
- (3) To process and make determinations as to complaints filed by any person alleging violations of this Article.

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<sup>2</sup> Because of this conclusion, we need not determine whether the conduct of complaint hearings by the Ethics Commission meets the definition of "quasi-judicial function" in §10-502(i) of the Act – that is, whether the hearings are "a proceeding before an administrative agency for which Chapter 1100, Subtitle B of the Maryland Rules would govern judicial review." The manner of judicial review of Ethics Commission orders is not entirely clear from our reading of the College Park Ethics Ordinance. In any event, the result is the same, for the Act is inapplicable to a quasi-judicial function.

- (4) To conduct a public information program regarding the purposes and application of this Article.
- (5) To promulgate, subject to approval by the Mayor and Council, written rules and regulations consistent with the provisions of this Article.
- (6) To define which violations shall be punishable as misdemeanors and which as municipal infractions.

Most of what the Commission does is an "executive function" outside the scope of the Act. In Part I of this opinion, we explained that the Commission's complaint resolution process was an "executive function" outside the Act. Similarly, when the Commission devises forms or provides advisory opinions it is engaged in executive functions – administering the local ethics law.<sup>3</sup> The Open Meetings Act does not apply to meetings held to carry out these functions.

Some of the Commission's responsibilities, on the other hand, are encompassed by the Act. When the Commission adopts binding regulations, for example, it is carrying out a "quasi-legislative" function that is subject to the Act, including its notice requirements. The information available to the Compliance Board does not permit a conclusion whether the Commission has complied with the Act on those occasions.

Finally, you raised the question whether the posting of a notice on city bulletin boards complies with the Act (assuming that the Act applies to the meeting in the first place). If the Ethics Commission had previously given public notice that this method would be used, posting on a bulletin board near the meeting site and generally accessible to interested persons would be permissible. §10-506(c)(3).

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.  
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<sup>3</sup> See Office of the Maryland Attorney General, *Open Meetings Act Manual* 11 n. 6 (1992).